

United States District Court

Middle District of Pennsylvania

Richard Kojczyk,
Plaintiff,

vs.
Pennsylvania Department
of Corrections, et al,
Defendants.

Civil Action

1:CV-01-1163

(A.D.A.)

(5)

35 pgs

**FILED
SCRANTON**

DEC 01 2003

Per

DERUTY CLERK

Plaintiff's Request

to File Ammended Civil Action Complaint

Respectfully Submitted,

s/ Richard Kojczyk

Richard Kojczyk #5977

501 Laurel Highlands

5706 Glades Pike P.O. Box 631

Somerset, Pa. 15501-0636

(1)

Your plaintiff, Richard Stojtych, respectfully requests this Honorable Court for Leave to File an Ammended Civil Action Complaint in This Cause of Action.

Plaintiff is not an attorney and therefore asks that he be allowed to correct any mistakes in his Complaint.

Because of plaintiff's disabilities, he requests 60 days in which to Ammend and File his Complaint.

Respectfully,
s/ Richard Stojtych

Certificate of Service

I, Richard Stojtych, hereby certify that I have mailed a true and correct copy of this "Request", on this 25th day of November 2003

To:

Pa. Dept. of Corrections	MR. Kenneth Kyler
P.O. Box 598	Superintendent
2520 Lisburn Rd.	SC1/Huntingdon
Camp Hill, Pa 17001-0598	1100 Pike St.
Jeffery A. Beard Ph.D.	Huntingdon, Pa. 16652

Rec'd
11-17-03
RM

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

RICHARD WOJTCZAK,	:	
	:	CIVIL ACTION NO. 1:01-1163
Plaintiff	:	
	:	(RAMBO, D.J.)
v.	:	(MANNION, M.J.)
	:	
PENNSYLVANIA DEPARTMENT :	:	
OF CORRECTIONS, <u>et al.</u> ,	:	
	:	
Defendants	:	

ORDER

Plaintiff, formerly an inmate at the State Correctional Institution, Huntingdon, ("SCI-Huntingdon"), Pennsylvania¹, filed this civil rights action pursuant to 42 U.S.C. § 1983, in which he alleges that the defendants violated his rights with respect to Department of Corrections Policy Statement DC-ADM 006 relating to accommodations for inmates with disabilities. (Doc. No. 1).

On July 9, 2001, the undersigned issued a report in which it was recommended that the action be dismissed for failure to exhaust administrative remedies. (Doc. No. 8). Following objections filed by the plaintiff, on July 25, 2001, the District Court issued an order adopting the report to the extent that the complaint was deemed to be filed pursuant to 42 U.S.C. § 1983 for failure to exhaust administrative remedies; dismissing the complaint to the extent that it was brought pursuant to the Americans with Disabilities Act, ("ADA"), 42

¹By letter dated June 12, 2002, the plaintiff notified the court that he had been transferred to SCI-Laurel Highlands, 5706 Glades Pike, P.O. Box 631, Somerset, PA 15501-0631. (Doc. No. 20).

U.S.C. § 12101, for failure to state a cause of action against the Commonwealth defendants, and directing the clerk to close the file. (Doc. No. 11).

On August 2, 2001, the plaintiff appealed the decision to the United States Court of Appeals for the Third Circuit. (Doc. No. 12). On March 12, 2003, the Third Circuit vacated the District Court's order and remanded the action for further proceedings. (Doc. No. 23). In doing so, the Third Circuit noted that, subsequent to the District Court's decision, it had held that "failure to exhaust is an affirmative defense to be pleaded by the defendant." Ray v. Kertes, 285 F.3d 287, 295 (3d Cir. 2002). Given this, even though the plaintiff had conceded that he did not utilize the prison's internal grievance process prior to filing his lawsuit, the Third Circuit found that the District Court acted "premature[ly]" when it dismissed the plaintiff's § 1983 claim because the defendants had not yet been served and therefore had not pled failure to exhaust or any other defense.

With respect to the plaintiff's ADA claims, the Third Circuit indicated that the plaintiff asserted claims under Title II of the ADA, which provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132. Citing to Pennsylvania Dep't of Corrections v. Yeskey, 524 U.S. 206, 209 (1998), the Third Circuit stated that

Title II "unmistakably includes State prisons and prisoners within its coverage" and reliance on Board of Trustees v. the Univ. of Alabama v. Garrett, 531 U.S. 356 (2001), misplaced, as that decision related to Title I of the ADA and specifically did not address whether congress abrogated Eleventh Amendment immunity in the context of a claim brought under Title II of the ADA.

Furthermore, the Third Circuit stated that it also held, subsequent to the District Court's decision, that claims under the ADA for prospective injunctive relief against state officials were not barred by the doctrine of sovereign immunity.

See Koslow v. Pennsylvania, 302 F.3d 161, 179 (3d Cir. 2002). Although the Third Circuit did not imply that the type of injunctive relief sought by the plaintiff was attainable or warranted, it concluded that it was error to dismiss the plaintiff's ADA claims pursuant to Garrett.

Finally, the Third Circuit remanded for consideration of the plaintiff's Rehabilitation Act claim.

The District Court has remanded the instant action to the undersigned for further proceedings. (Doc. No. 22).

Accordingly, **IT IS ORDERED THAT:**

1. Process shall issue; and,
2. The clerk shall serve Doc. Nos. 1, 2, 8, 11, and 23.

s/ Malachy E. Mannion
MALACHY E. MANNION
United States Magistrate Judge

Dated: November 13, 2003

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per
4-11-03
per

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

RICHARD WOJTCZAK,
Plaintiff

v.

PENNSYLVANIA DEPARTMENT
OF CORRECTIONS, *et al.*,
Defendants

CIVIL NO. 1:CV-01-1163

FILED
HARRISBURG, PA
APR 10 2003
MARY E. D'ANDREA, CLERK
Per
Deputy Clerk

ORDER

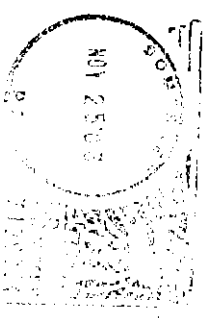
This court is in receipt of the remand from the Third Circuit Court of Appeals in the captioned case. Accordingly, **IT IS HEREBY ORDERED THAT** the captioned action is remanded to Magistrate Judge Mannion.

s/Sylvia H. Rambo
SYLVIA H. RAMBO
United States District Judge

Dated: April 10, 2003.

R. W. J. T. 224K AF5977
5706 Glades Pike P.O. Box 631
Homeret, Pa. 15561-0631

"Female Mail"
PA Dept. Of Corrections



cert. of
est. of

United States District Court
235 North Washington Ave.
P.O. Box 1148
Scranton, Pa. 18501

Margaret J. McLaughlin & Marion

REC'D
SCRAN
DEC 01
MARY E. D'ANGELO
Per
DEPUTY